

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

---

STATE EMPLOYEES' ASSOCIATION	:	
OF NEW HAMPSHIRE, INC.	:	
	:	
Complainant	:	
	:	CASE NO. S-0347
v.	:	
	:	DECISION NO. 79023
BOARD OF TRUSTEES, UNIVERSITY	:	
SYSTEM OF NEW HAMPSHIRE, KEENE	:	
STATE COLLEGE AND PLYMOUTH	:	
STATE COLLEGE	:	
	:	
Respondent	:	
	:	

---

APPEARANCES

Representing the University System of New Hampshire:

Gary Wulf, System Resource Administration  
Nicholas DiGiovanni, Jr., Counsel

Representing the State Employees' Association of New Hampshire, Inc.:

Richard Molan, Assistant Executive Director  
Robert Clark, Esquire, Counsel  
Howard Zibel, Esquire, Counsel

BACKGROUND

This is a case arising out of charges brought by the State Employees' Association of New Hampshire, Inc. (SEA) against Keene State College (KSC) and Plymouth State College (PSC) of the University System of New Hampshire (hereafter System). The SEA is and was representative of the operating staff employees at each campus and contracts had been in existence covering both bargaining units since 1975. Both contracts expire on August 31, 1979; both contracts were signed before the effective date of RSA 273-A and were negotiated under prior law which did not require negotiations over wages, allowing public employers to set wages without negotiations during the life of the contract, except under certain circumstances (see SEA v. KSC and PSC, Board Decision #79006). The contracts provide, in almost identical language, that;

"University System policies and procedures shall be followed with regards to classification and wage and salary administration involving employees within the unit" (PSC contract § 19.1: KSC § 21.1).

During the life of the contracts, wages were set by the System Board of Trustees from time to time and the wage scale applied to unit members under the operating staff handbook. In addition, other policies contained in the handbook as to wages, salaries, unit increases and evaluation as contained in the Operating Staff Handbook applied to unit and non-unit employees uniformly during the contract.

On May 8, 1978, the Personnel Committee of the System Board of Trustees adopted a schedule of increases for operating staff and noted that those increases (for System Fiscal Year 1979, July 1, 1978 - June 30, 1979) would be the "final ... which will be applicable to the Operating Staff at PSC and KSC. All wages for those staffs will be determined through collective bargaining effective July 1, 1979. The current wage and salary policies will cease to be applicable to staffs electing or having elected to negotiate such matters effective June 30, 1979." (System Exhibit 5). This decision received wide publicity (System Exhibit 6).

On July 26, 1979, System Trustees adopted a 7% wage increase for fiscal year 1980 (July 1, 1979 - June 30, 1980) but specifically excluded employees covered by collective bargaining from its coverage on the basis that wage increases are negotiable under RSA 273-A. In addition, on or about June 19, 1979, (PSC) and July 12, 1979 (KSC), the operating staff employees and/or supervisors were informed that as of July 1 they would receive no more merit increases or performance evaluation sheets since increases and policies would be subject to negotiations after that date.

The SEA complained that the failure to apply the 7% wage increase to operating staff at PSC and KSC and the elimination of increases and evaluations as of July 1 was a violation of the contract between the parties and discrimination against union members in violation of 273-A:5, I (h) and (c), respectively; and RSA 273-A:5, I (i) as a rule invalidating a collective bargaining agreement; and RSA 273-A:5, I (g) as a general violation of statute.

The System denies the allegations on the basis that its actions were within the discretion of the public employer, did not discriminate, were not a surprise to the SEA and that the action was taken because of the duty to bargain over wages for the new year or the System would have been subject to a charge of unfair labor practice for unilaterally setting wages.

The PELRB issued a temporary order on August 3, 1979 directing that all policies remain in effect until a full hearing could be held, but taking no position on the 7% increase. A full hearing was held August 7, 1979.

**FINDINGS OF FACT  
AND RULINGS OF LAW**

The issues raised in this appeal are:

1. Was there a violation of the existing contracts by the System in cancelling personnel policies and denying the 7% raise to employees covered by the Contracts?

2. Was there anti-union intent and discriminatory purpose involved in the actions?

I. The contracts in existence were negotiated at a time when wages were set by the employer. All of the evidence at the hearing indicated that the expectations prior to the signing of the contract and the practice under the contract was that System pay scales applied to the employees in question during the term of the contract, with the exception of special re-opener provisions which are not relevant to this decision. It is certainly true that expectations prior to a contract and practice under that contract are relevant to understanding the meaning of the terms of the contract. The contract does not expire until August 31, 1979 regardless of any agreement as to retroactive effect of a new contract. Indeed, there is no guarantee that there will be another contract, there is no final agreement on the terms of the contract and, as occurred in this particular case, there has been a vote for decertification of the SEA on one of the campuses. Therefore, the rights of the employees under the contract extend until August 31 regardless of any other factor, absent final, written, signed and ratified agreement to the contrary. The unilateral action of the System in not applying the 7% increase in the same way that all prior increases had been applied to operating staff employees, union or non-union, covered by a contract or not covered by a contract, for the period July 1, 1979 to August 31, 1979, is hereby found by the Board to have been a violation of the contract. Pay levels beyond August 31, 1979 are not covered by the contract and must be negotiated under RSA 273-A for employees in units represented by the SEA after that date.

As to the cancellation of merit increase and annual review policies and the like, the Board finds that the contract contemplates that System Board of Trustees policies applicable to operating staff employees elsewhere also be applied to Keene and Plymouth employees during the life of the contract and that no separate policies were contemplated for employees covered by collective bargaining. If the policies have changed generally, the requirement of the contract is that they be generally applied until August 31, 1979. If policies have remained the same as before July 1 at non-union campuses, they must remain the same at KSC and PSC.

Therefore, the answer to the first question raised is that there has been a violation of the contract and, therefore, there has been a violation of RSA 273-A:5, I (h).

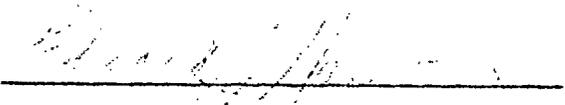
II. As to anti-union intent and automatic finding of unfair labor practice because of application of different salary rates to different employees holding similar positions, the evidence at the hearing was that the negotiations between the parties had contemplated a retroactive effective date of the contract to July 1, the beginning of the System fiscal year. In addition, there were sufficient ambiguities in the case and sufficient warning to the SEA concerning the intentions of the System to change its policies which were not answered by the SEA nor concerning which any unfair labor practice complaint was filed nor request for declaratory judgment, that the Board is unable to find sufficient intention or animus to support the charges. The System explained its reasoning and intent for the change in policies and, although it has been found to have violated the contract, the Board will not find the intent to commit an unfair labor practice on the basis of discrimination because of the actions. The presumption discussed in PELRB decision #79017, if applicable, has been rebutted under these circumstances.

ORDER

The Board issues the following order:

1. Having found a violation of RSA 273-A:5, I (h), the Board orders that Plymouth State College and Keene State College operating staff employees receive the 7% raise granted to other operating staff employees through August 31, 1979, and that benefit policies and procedures be uniformly applied to operating staff employees, through August 31, 1979.

2. The Board finds no other unfair labor practices as charged.

  
\_\_\_\_\_  
EDWARD J. HASELTINE, CHAIRMAN  
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 30th day of August, 1979

Board members Moriarty, Cummings and Mayhew also present. All concurred.  
Board Clerk Evelyn LeBrun and Board Counsel Bradford Cook also present.